

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/028/2017
(Present: A.S. Dasappan)
Dated: 30th June 2017

Appellant : Sri. Martin Thomas
Favorite Life Style,
Ketson Rise Apartment,
Ketson Road, Nanthancode,
Thiruvananthapuram

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd.,
Vellayambalam,
Thiruvananthapuram

ORDER

Background of the case:

M/s Favorite Life Style Pvt. Ltd. is a LT-VII A 3 phase commercial consumer, under Electrical Section, Vellayambalam, having consumer No.15972. The APTS Thiruvananthapuram unit of KSEB along with the Sub-Engineer of Electrical Section, Vellayambalam, inspected the premises of the consumer on 04-06-2016 and found that the Current Transformer (CT) ratio of the metering circuit is 400/5 i.e., the multiplication factor (MF) is 80. On verifying the regular energy bills issued to the consumer, it was found that the CT ratio was wrongly taken as 100/5 (MF=20) instead of 400/5 (MF=80) from 25-07-2012 to 04-06-2016. Thus the bills to the consumer were raised not for the actual energy he has consumed till 04/2016 due to error in MF used for billing. Hence a short assessment bill to recover the loss, amounting to Rs.18,91,732/- and subsequently the same has been revised to Rs. 40,90,284/- and was served to the consumer on 18-07-2016. Against this, the consumer had filed a complaint before the CGRF challenging the demand raised by the respondent. This was disposed of by directing the respondent to revise the bill for two years without interest and allow suitable instalment, if the petitioner desires, vide order dated 30-11-2016 in OP No.130/2016. Aggrieved by this order, the appellant preferred this appeal before this Authority.

Arguments of the appellant:

1. The Appellant is the petitioner in the O.P. No. 130/2016, before the Honourable CGRF, Kottarakara. He was one of the Directors of the Company M/s Favorite Life Style Pvt. Ltd who occupied the premises with consumer No. 1145078015972, under Electrical Section, Vellayambalam in LT VII A tariff. The connection was given for conducting an apparel shop. The consumer company was a lessee of the premises on rental basis. The appellant has been remitting the entire bills, for the company as and when demanded, without any default.

2. As the business became dull the company decided to wind up its business and sold the goods to M/s Mobility Fashions, a partnership firm and vacated premises on 28-04-2016. Thereafter the appellant's company has no connection with the premises and no longer became the actual consumer of electricity. M/s Mobility Fashions, the actual occupier of the premises has been occupying and using electricity from 28-04-2016 onwards. As the name of the consumer has not been changed on the records of the KSEB, bills were issued in the name of the appellant, even after the vacation of the premises, but such bills are being paid by the present occupier.

3. While so the KSEB officials inspected the premises on 04-06-2016. They prepared a Mahazar showing that the meter is a CT meter with a ratio of 400/5, but on perusal of the bills it is seen that the CT ratio 20 is taken for calculation of the charges. A copy of the above Mahazar is produced herewith and marked as Exhibit-P1. Thereafter the Assistant Engineer sent a letter dated 08-06-2016 to the appellant stating that the CT used in the premises is of ratio 400/5 and the multiplication factor to be applied was 80 and instead of this the multiplication factor 20 was wrongly taken and short assessment is prepared for 24 months. A bill for Rs. 18,91,732/- was also enclosed with the above letter. A copy of the above letter and bill is produced herewith and marked as Exhibit-P2.

4. It is submitted that Exhibit P2 bill is highly illegal, erroneous and arbitrary. The appellant has been remitting the entire regular bills without any default and without leaving any arrears. Those bills were full and final bills with regard to the supply and consumption of the electricity. Those bills were not provisional or temporary bills. Hence the respondent has no right to raise any bills alleging arrears, on the ground of mistake on their part in effecting service connection.

5. The appellant therefore challenged the above demand before the CGRF, Kottarakara in OP No. 130/2016. A copy of the complaint filed before the CGRF is produced herewith and marked as Exhibit-P3. The respondent Asst. Executive Engineer filed a version a copy of which is produced herewith and

marked as Exhibit-P4 In the version the opposite party stated that the actual amount due is Rs. 40,90,284/- and a calculation statement is also attached with the version. '

6. The Honourable CGRF heard and disposed the complaint by order dated 30-11-2016. A copy of the above order of the CGRF is produced herewith and marked as Exhibit-P5. The appellant did not receive the above order from the CGRF, but a copy of the same was received from the Assistant Engineer along with a letter dated 04-02-2017 directing to remit an amount of Rs. 18,91,792/- which would be the amount of a bill to be issued in future. A threat of disconnection was also made in the above letter, in case of default of remittance within 15 days. A copy of the above letter dated 04-02-2017 is produced herewith and marked as Exhibit-P6.

7. Exhibit -P6 letter is per-se illegal, unjust, unauthorized and unsustainable. The Assistant Engineer has no authority to make a demand of an amount which will be covered in a bill to be issued in future. Exhibit P6 letter is unsustainable and liable to be set aside.

8. Exhibit P6 letter is issued along with a copy of the order of the CGRF, wherein it is advised to file appeal before this Honourable Authority within 30 days. The AE is well aware of the 30 days time allowed by the CGRF for filing appeal, because he himself served the order of the CGRF to the appellant on 08-02-2017. Hence the appellant apprehends that supply will be illegally disconnected by the Assistant Engineer by resorting to dubious methods even before the expiry of the appeal period allowed by the CGRF with an intention to harass the appellant and the present occupier of the premises.

9. There is no arrears of electricity charges in connection with the supply in respect of the premises with consumer No.15972. All the bills were timely remitted without any default. It is in such a no liability situation the premises was transferred to the new occupier, M/s Mobility Fashions on 28-04-2016 for conducting business. If there was any such liability the premises would not have been transferred or at least the liability condition would have been suitably incorporated in the transfer deed. As on the date of transfer there was no pending payment of any charges to the KSEB by the appellant and transfer was made in this factual circumstances.

10. It is the case of the respondent that the CT ratio is 400/5 and the multiplication factor to be applied was 80 and instead of this the multiplication factor 20 was wrongly taken for billing from the very beginning from the initial date of connection on 20-07-2012. It is to be noted that the CT or the meter was not installed by the appellant or the consumer. It is owned and operated by the KSEB officials. The appellant or the consumer had no role in its operation. He is prevented from interfering in to the operation of the meter. He is not accounting the meter reading or calculating the charges on the basis of

the meter reading. It is done by the officials of the KSEB. The appellant was making his monthly accounts and fixing the charges of his supplies made or services rendered on the basis of the component of the electricity charges also. Such bills were paid by his consumers then and there and now it is impossible for him to raise any arrear bill on the basis of the back arrear bill issued by the KSEB. Hence the appellant is not liable to honour the impugned demand.

11. The KSEB officials are solely responsible for the wrong accounting of the electricity charges. The arrears, if any, is to be realized from the persons responsible for the wrong billing. The appellant is not liable to compensate the loss made by the officials of the KSEB. The respondent or the Assistant Engineer has no authority to fix any liability on the part on the consumer for the loss sustained to the KSEB because of the lapses and negligence on the part of the officials. In Para 9 of the order, the CGRF rightly found that there is serious lapses and irresponsibility on the part of the officials of the KSEB and huge amount of loss is sustained to the KSEB due to the lapse on the part of the officials. The CGRF further held that it is the liberty of the licensee to collect the loss from the persons responsible. The appellant has no objection in such findings of the CGRF. Having found so, the CGRF held that even though it is not the fault of the appellant, the appellant is liable to pay the short collection amount for a period of 24 months. That part of order, in so far as finding liability on the part of the appellant in paying the arrears for the fault of the KSEB officials is highly erroneous and objectionable. Having found the appellant not responsible for the loss by the CGRF, the rider that the appellant is liable to pay the arrear charges is perverse and unsustainable.

12. This appeal is filed against Exhibit 5 order of the CGRF in so far as casting the liability on the part on the part of the appellant for the wrong committed by the officials of the KSEB. Being aggrieved by the above said order, the appellant begs to prefer this appeal on the following among other

There is no arrears of electricity charges in connection with the supply in respect of the premises with consumer No. 15972. All the bills were timely remitted without any default. It is in such a no liability situation the premises was transferred to the new occupier, M/s Mobility Fashion on 28-04-2016 for conducting business. If there was any such liability the premises would have been transferred or at least the liability condition would have been suitably incorporated in the transfer deed. As on the date of transfer there was no pending payment of any charges to the KSEB by the appellant and transfer was made in this factual circumstances. The premises was transferred to the new occupier without any arrears of charges. Hence the appellant is not liable to pay the alleged arrears.

According to the respondent the CT ratio is 400/5 and the multiplication factor to be applied was 80 and instead of this the multiplication factor 20 was wrongly taken for billing from the very beginning from the initial date of

connection on 20-07-2012. It is to be noted that the CT or the meter was not installed by the appellant or the consumer. It is owned and operated by the KSEB officials. The appellant or the consumer had no role in its operation. He had also no role in accounting the meter reading or calculating the charges on the basis of the meter reading. It is done by the officials of the KSEB.

Without prejudice the above contentions it is submitted that the appellant is not the consumer. He has no personal liability to pay the electricity charges, since the company M/s Favorite Life Style Pvt. Ltd is the consumer. So if at all there is any lawful arrears, the same is to be realized from the company.

Reliefs sought for:

- i) Declare that the order of the CGRF in so far as casting the liability on the part of the appellant for the wrong committed by the officials of the KSEB is highly erroneous and unsustainable and that part of the order may be set aside.
- ii) To set aside Exhibit P6 letter demanding for Rs. 18,91,792/-
- iii) award the cost of the appellant to be payable by the KSEB
- iv) grant such other reliefs that this Honourable Ombudsman may deem fit and proper in the interest of justice.

Arguments of the respondent:

1. The Appellant, Sri. Martin Thomas is a consumer having LT-7A, 3-phase commercial electric connection bearing consumer No. 1145078015972 under Electrical Section, Vellayambalam which was effected on 25-07-2012. The grievance of the Appellant is regarding arrear bill dated 09-06-2016 for Rs. 18,91,732/- issued to him. Subsequently the same has revised to Rs. 40,90,2844- and issued on 18-07-2016 is submitted as Exhibit -R1.

2. The bill is issued for arrears of electricity charges based on the site inspection conducted by APTS on 04-06-2016, on the ground that for a period from 25-07-2012 to 04-06-2016, there was a mistake in computing the electricity charges payable that the multiplication factor applied was 20 instead of 80. A copy of the site mahazar is submitted as Exhibit-R2.

3. The meter installed at the consumer premises is of L&T make and bearing meter No. 12023796 and with C.T. ratio 400/5. The above ratio is to be applied to the monthly consumption recorded in the meter to arrive at the actual consumption. But wrong multiplication factor of 20 was applied instead of 80 during the period from 25-07-2012 to 04-06-2016. So a bill for Rs. 40,90,284/- was issued to the consumer towards his actual consumption of energy with the actual multiplication factor.

4. On receipt of the order dated 30-11-2016 in OP No. 130/2016 of CGRF, directing the Respondent to revise the bill for two years without interest and allow suitable instalments, if the Appellant desires, even if the actual period of the anomaly protracts to a longer period, the respondent sought directions from the higher authorities to comply the order. The board issued orders dated 06-01-2017 vide B.O. D (D.S&G.E) No. 40/2017 (LF.II/10601/2016) directing the Legal Liaison Office to take necessary steps to file a Writ Petition before the Hon'ble High Court of Kerala with the support of the respondent. A Copy of the Board Order is submitted as Exhibit - R3.

5. It is respectfully submitted that the Hon'ble High Court issued verdict in a similar case (WP (C) No. 5845 of 2007 dated 30-05-2012) of applying wrong multiplication factor and raising demand for the entire period of wrong assessment for collecting the short remittance by applying the actual multiplication factor and actual consumption for the entire period. A copy of the Judgment is submitted herewith as Exhibit -R4.

6. It is further submitted in the Judgment WA No. 211of 2012 dated 09-02-2012, the Hon'ble High Court clearly mentioned that "whatever the fact remains, the dues would amount to Public Revenue, therefore, the question of normal period of limitation is not applicable, both towards electricity and water charges".

7. From the above, it is evident that KSEB issued the demand for Rs. 40,90,284/ - as per the prevailing rules and regulations. Hence, the version of the appellant against the bill raised by the Assistant Engineer, Electrical Section, Vellayambalam is against facts and intended to mislead the Hon'ble Ombudsman with vested interest.

8. Subsequent to the Order of the Hon'ble CGRF dated 30-11-2016 in OP 130/2016, the Respondent advised the Appellant to remit the amount of Rs. 18,91,732/- vide letter dated 04-02-2017, limiting the assessment period to 24 months as per the direction contained in the Order of the Hon'ble CGRF. A copy of the letter given by the Assistant Engineer, Electrical Section, Vellayambalam is submitted herewith as Exhibit - R5.

9. But, the Appellant failed to remit the amount within the stipulated time and obtained a stay order from the Hon'ble Ombudsman restricting the Respondent from disconnecting the supply as per Supply Code Regulations. A copy of the direction from the Hon'ble Ombudsman is submitted as Exhibit - R6.

10. For the reasons submitted above, it is humbly prayed that the Hon'ble Ombudsman may kindly dismiss the Petition and direct the appellant to remit the entire amount of Rs. 40,90,284/- which is due with KSEB Ltd. as it

corresponds to his actual consumption and hence the intention of the Appellant to misuse the Public money can be prevented.

Analysis and Findings:

Hearing of the Appeal Petition was conducted on 20-06-2017 in the Court hall of CGRF, Kottarakkara at Kollam. Sri. T. Hari Kumar and Sri. Raja Rajan, represented the appellant's side and Sri. Anil Kumar V, Assistant Executive Engineer, Electrical Sub Division, Vellayambalam, represented the respondent's side. On examining the petition, the statement of facts filed by the respondent, considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The first argument of the appellant is that the consumer is penalized for the mistake of the KSEB authorities. Though it was a fault on the part of the KSEB, it cannot be ignored that the party has actually consumed the energy and he is liable to pay for it. He is required to pay the charges only and not any penal amount. There occurs a mistake in the billing (calculation) due to wrong application of MF or may be due to some oversight. Amounts of short payments became due only after realization of mistake. Regarding the contentions of the appellant that he vacated the premises on 28-04-2016 and no longer became the actual consumer of electricity, it poses no weightage, since the realization of electricity charges short collected has been limited for a maximum period of twenty four months, as per the orders of the CGRF.

The respondent has argued that the Hon'ble High Court issued verdict in a similar case (WP (C) No. 5845 of 2007 dated 30-05-2012) of applying wrong multiplication factor and raising demand for the entire period of wrong assessment for collecting the short remittance by applying the actual multiplication factor and actual consumption for the entire period. But the said case mainly considered the limitation prescribed in Section 56 (2) of the Electricity Act, 2003. On going through the judgment, it is found the verdict has no relevance in this present case. Amounts of the short assessment bill were never demanded earlier and the same cannot be said to be due at any earlier time. In short the word 'due' in section 56(2) means the amount due and payable after a valid bill has been served on the consumer. In this case the short assessment bill was issued on 09-06-2016 for Rs. 18,91,732/- and subsequently the same has been revised to Rs. 40,90,284/- and served on 18-07-2016. Later the CGRF disposed of the petition filed by the appellant by directing the respondent to revise the bill for two years without interest and allow suitable instalment, if the petitioner desires, vide order dated 30-11-2016 in OP No. 130/2016. Hence the amount of the impugned bill cannot be said to be unrecoverable and barred under section 56(2) of the said Act. The appellant has never raised an argument of limitation under Section 56(2) of the Electricity Act, 2003. Here the only issue to be settled is the maximum period

of realization of electricity charges short collected. The Electricity Supply Code 2014 came in force with effect from 1st April 2014 and specific provisions are included in the Code regarding the “Anomalies attributable to the licensee which are detected at the premises of the consumer”. Regulation 152 reads as follows:

152. Anomalies attributable to the licensee which are detected at the premises of the consumer.-

(1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.

(2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.

(3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realized by the licensee without any interest:

Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months:

Provided further that while assessing the period of such short collection the factors as specified in sub regulation (8) of regulation 155 shall be considered:

Provided also that realization of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months.

(4) The consumer may be given installment facility by the licensee for a maximum period of twelve months for the remittance of such amount of short collection with interest at the bank rate as on the date of remittance of the amount of installment.

As per clause 134 of Electricity Supply code, 2014, if the Licensee establishes that it has under charged the consumer, by review or otherwise, it is open to the Licensee to recover the amount so undercharged from the consumer by issuing a bill. In this case, the respondent has only done that and

so it is found that the consumer is liable to honor the bill for Rs. 18,91,732/- issued to him. The APTS has recommended to calculate short assessment as per Regulation 152 of the Supply Code 2014. The CGRF has also taken the same decision and held the view that Regulation 152 is applicable in this case and directed to revise the bill for two years as per the above provision. For the above reasons, I do not find any infirmity in the order passed by the CGRF by directing the respondent to limit the realization of the short collection of electricity charges for a period of twenty four months.

The respondent has stated that a writ petition was filed in the Hon'ble High Court of Kerala against the orders issued by the CGRF. But admission of the case or writ appeal number is not furnished. Hence the objections of the respondent against admitting this petition by this Authority cannot be sustained.

Decision

From the above noted analysis, findings and the conclusions arrived at; I decided to dismiss the petition by upholding the order of CGRF, Kottarakkara limiting the realization of the short collection of electricity charge for a period of 24 months without interest and also allowing suitable instalments, if the appellant desires so.

There is lapse on the part of the local Electrical Section officials by taking the multiplication factor wrongly for a long period. But the disciplinary action against erring officers of KSE Board does not come under the purview of this Forum. Hence the CGRF's order for taking suitable action against the erring officers shall prevail and the Board may decide it as per Law.

Having concluded and decided as above, the Appeal Petition No. P/028/2017, filed before this Authority stands disposed of accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/028/2017/ _____ /Dated: _____

Delivered to:

1. Sri. Martin Thomas, Favorite Life Style, Ketson Rise Apartment, Ketson Road, Nanthancode, Thiruvananthapuram

2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Vellayambalam, Thiruvananthapuram

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.